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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,420	04/01/2004	Shirley B. Koffroth	SBK03	8855

7590

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Mrs. Shirley B. Koffroth
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EXAMINER

ROANE, AARON F

ART UNIT

PAPER NUMBER

3739

DATE MAILED: 03/11/2005


Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/816,420

Applicant(s)

KOFFROTH, SHIRLEY B. 

Examiner

Aaron Roane

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 2 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 2 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claim 1 is rejected under 35 U.S.C. 102(e) as being anticipated by Plewes (USPN 6,656,210 B1).

Regarding claim 1, Plewes discloses a thermal device comprising a strip of flexible material (14), said strip having a body contacting side (18) and an opposite outwardly facing side (side opposite 18 on which 30 is located) and an upper edge (edge adjacent

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and parallel to the short portion 28 shown in figure 3) and lower edge (edge opposite upper edge and edge adjacent and parallel to the short portion 30 shown in figure 3); pocket-like receptacles (16) secured to the innermost body contacting side of the thermal device for the placement of frozen-flexible ice bags type blue or treated ice; a connecting means (the combination of 28 and 30 that comprise 22) to secure the upper and lower edges of the belt together and hold the belt in folded condition with the pocket-like receptacles inside the fold and the strip of flexible material to the outside thereof, see col. 3-4 and figures 1-3. Plewes fails to disclose that the strip of flexible material of sufficient length and width to gird a wearer's waist from the midriff down. However, Plewes does disclose "the main wrapping member 12 comprises a plurality of shapes and sizes for the purpose of utilization of one of the main wrapping members 12 on a particular body part such as an elbow, knee or other similar area. As to a further discussion of the manner of usage and operation of the present invention, the same should be apparent from the above description. Accordingly, no further discussion relating to the manner of usage and operation will be provided. With respect to the above description then, it is to be realized that the optimum dimensional relationships for the parts of the invention, to include variations in size, materials, shape, form, function and manner of operation, assembly and use, are deemed readily apparent and obvious to one skilled in the art, and all equivalent relationships to those illustrated in the drawings and described in the specification are intended to be encompassed by the present invention," see col. 4, lines 12-29.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Plewes (USPN 6,656,210 B1).

Regarding claim 1, Plewes discloses a thermal device comprising a strip of flexible material (14), said strip having a body contacting side (18) and an opposite outwardly facing side (side opposite 18 on which 30 is located) and an upper edge (edge adjacent and parallel to the short portion 28 shown in figure 3) and lower edge (edge opposite upper edge and edge adjacent and parallel to the short portion 30 shown in figure 3); pocket-like receptacles (16) secured to the innermost body contacting side of the thermal device for the placement of frozen-flexible ice bags type blue or treated ice; a connecting means (the combination of 28 and 30 that comprise 22) to secure the upper and lower edges of the belt together and hold the belt in folded condition with the pocket-like receptacles inside the fold and the strip of flexible material to the outside thereof, see col. 3-4 and figures 1-3. Plewes fails to disclose that the strip of flexible material of sufficient length and width to gird a wearer's waist from the midriff down. However,

Plewes does disclose "the main wrapping member 12 comprises a plurality of shapes and sizes for the purpose of utilization of one of the main wrapping members 12 on a particular body part such as an elbow, knee or other similar area. As to a further discussion of the manner of usage and operation of the present invention, the same should be apparent from the above description. Accordingly, no further discussion relating to the manner of usage and operation will be provided. With respect to the above description then, it is to be realized that the optimum dimensional relationships for the parts of the invention, to include variations in size, materials, shape, form, function and manner of operation, assembly and use, are deemed readily apparent and obvious to one skilled in the art, and all equivalent relationships to those illustrated in the drawings and described in the specification are intended to be encompassed by the present invention," see col. 4, lines 12-29. In view of the lack of explicit recitation that the device of Plewes can, should and is used around the patient's waist, a further reference is provided to show that it would be obvious to combine the references to meet the claimed invention.

Horning discloses a bandage for application of therapeutic cold or heat treatments to injuries and teaches that the device can and should be configured in many different sizes and shapes in order to fit/conform to many different areas of one or more persons' bodies including the waist, see col. 1-8 and figures 1a-8. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art to modify the invention of Plewes, as is well known in the art and taught by Horning, to configure the device in many different sizes and shapes in order to fit/conform to many different areas of one or more persons' bodies including the waist in order to apply thermal treatment to that area.

Regarding claim 2, Plewes discloses the claimed invention except for fastening means on the inner side of the upper portion of the pocket-like receptacles; thus securing the ice bags from falling out, and facilitating the removal of the ice bags at intervals for refreezing when the ice melts; depending on the temperature, body functions, and outer garment of the user while wearing the device. Horning teaches placing fastening means (18) located on the inner side of the upper portion of the pocket-like receptacles in order to removably secure the thermal agent (heat retention or cold retention material) inside the pocket, see col. 2-8 and figures 1a-8, particularly figure 3. Therefore at the time of the invention it would have been obvious to one of ordinary skill in the art modify the invention of Plewes, as taught by Horning, to provide fastening means on the inner side of the upper portion of the pocket-like receptacles in order to removably secure the thermal agent (heat retention or cold retention material) inside the pocket.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron Roane whose telephone number is (571) 272-4771. The examiner can normally be reached on Monday-Thursday 7AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A.R. *A.R.*
March 7, 2005

Roy D. Gibson
ROY D. GIBSON
PRIMARY EXAMINER